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SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC

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STB Finance Docket No. 35306

LASSEN VALLEY RAILWAY LLC  
--ACQUISITION AND OPERATION EXEMPTION--  
UNION PACIFIC RAILROAD COMPANY

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REPLY OF LASSEN VALLEY RAILWAY LLC

ENTERED  
Office of Proceedings  
DEC 22 2009  
Part of  
Public Record

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Dated: December 22, 2009

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REPLY OF LASSEN VALLEY RAILWAY LLC

Lassen Valley Railway LLC, pursuant to 49 C.F.R. 1104.13(a), replies to the Nevada Central Railroad's December 17, 2009, Petition to Reject and or Revoke and Motion for Oral Argument and Leave to Supplement Filing, as follows:

A.

Nevada Central Railroad's pleading should be stricken.

The Board is commendably tolerant in accepting the occasionally imperfect pleadings of *pro se* litigants before the agency. There, however, must be a limit to how irrational and impertinent a submission may be that is tendered by a *pro se* litigant for filing with the Board. The Board's regulation, 49 C.F.R. 1103.11, declares, in part, "[A]ll persons appearing in proceedings before it [shall] conform, as nearly as possible, to the standards of ethical conduct required to practice before the courts of the United States." That admonition applies to *pro se* litigants as well as lawyers and practitioners.

The Nevada Central Railroad's December 17, 2009, Petition to Reject and or Revoke and Motion for Oral Argument and Leave to Supplement Filing is irresponsible

in its accusations and is about as unethical a pleading as is conceivable. At page 4 of its pleading, Nevada Central Railroad capsulizes the substance of its contentions, as follows:

Bottom Line, is that the stated intent by RTI to file an OFA within (STB: FD-33-230X), was a Complete Artifice manufactured by [UP and Schumacher] with Smoke and Mirrors, as a means of Criminally Defraud NCR for a period in excess of 2-Years from obtaining a Certificate of Public Convenience and Necessity as a Nevada state Based Rail Carrier, in order to enable UP and BNSF the necessary time to Maintain and Execute its Secret Covenant and Conspiracy with individuals employed within the U.S. Department of Energy, along with Director of Section of Environmental Analysis Victoria Rutson and her assistant David Navecky, along with Acting Secretary of STB; Ann Quinlan, to RIG and thus enable the SYSTEMATIC THEFT by UP and BNSF as defined within but not limited to the: Federal RICO Act (Hobbs), as well as the Federal Industrial Economic Espionage Act, of the [NCR-ByPass™ Legally Defined within FD: 34382], from NCR and its Shareholders.”

The Board isn't required to accept such unsubstantiated nonsense. It is to avoid the reckless and baseless accusations which characterize the submission of Nevada Central Railroad that 49 C.F.R. 1104.4(b) requires, “The original of each document not signed by a practitioner or attorney must be: . . . Verified, if it contains allegations of fact, under oath by the person on whose behalf it is filed, or by a duly authorized officer of the corporation in whose behalf it is filed.” Conspicuously, the pleading of Nevada Central Railroad was not verified.

On whose behalf the pleading was filed is altogether uncertain. At the conclusion of the foregoing excerpt, Nevada Central Railroad refers to “NCR and its Shareholders”. The pleading and its Certificate of Service, however, are signed “Robert Alan Kemp, D/B/A: NEVADA CENTRAL RAILROAD.” Is the Nevada Central Railroad a corporation or a sole proprietorship? The pleading provides no answer.

And just what is the role of Aviation Technologies LTD. whose name appears at the top of the cover for the Nevada Central Railroad's pleading? At page 3 of the

pleading, Nevada Central Railroad contends that the railroad line it proposes to construct "will be sustained for a Minimum Period of 50-Years by revenues generated by Customers for which ATL has already contracted for the provision of Transportation Services constituting Interstate Commerce by Rail with its own (Proprietary) 21+ Mile Re-Constructed and Upgraded: [HEAVY HighSpeed RailCar™ System."

In its Verified Notice of Exemption filed November 16, 2005, in Finance Docket No. 34773, Nevada Central Railroad—Exemption for Acquisition and Operations of Rail Service—in Elko and White Pine Counties, Nevada, Nevada Central Railroad identified Aviation Technologies LTD as its representative and designated it to receive copies of any comments or requests for conditions filed in that proceeding. The Board rejected the pleading of the Nevada Central Railroad in that proceeding by its Decision, served November 22, 2005, stating, "The notice will be rejected because it is unclear and fails to comport with the Board's filing requirements."

The Board should reject the submission of Nevada Central Railroad in this proceeding, as well. That the Board is empowered to do so is indisputable. 49 C.F.R. 1104.10(a) states, "The Board may reject a document, submitted for filing if the Board finds that the document does not comply with the rules."

The pleading of Nevada Central Railroad not only fails to comply with the Board's rules. It constitutes a flagrant abuse of the Board's processes, which the Board should not tolerate. The pleading should be rejected.

B.

No ground exists for the Notice's rejection or revocation.

Nevada Central Railroad asserts that the Notice of Exemption of Lassen Valley Railroad LLC ("LVR"), filed November 17, 2009, contains false or misleading information in stating, at page 2 of its Notice of Exemption, "A Line Sale Contract has been negotiated between LVR and UP and is expected to be finalized within the next few days, when a copy will be filed with the Board." Nevada Central Railroad has the audacity to allege that "LVR lied" when it made that statement, claiming that there was no Line Sale Contract between LVR and the Union Pacific Railroad Company ("UP"). In fact, copies of the Line Sale Contract were filed with the Board on December 18, 2009.

Nevada Central Railroad next contends that LVR incorrectly described the lines it was acquiring from UP as the Flanigan Industrial Lead, extending between Milepost 338.33 near Flanigan, NV, and Milepost 360.10 near Wendel, CA, and the Susanville Industrial Lead, extending between Milepost 358.68 and Milepost 359.25 near Wendel, CA. Nevada Central Railroad claims to be "[c]ondemning the majority of the historic Susanville Industrial Lead, in order to institute a service connection to the BNSF Main Line System in Northern California. . ." It, however, does not identify the court in which it is pursuing its condemnation proceeding or offers any details of its alleged condemnation action.

Nevada Central Railroad then alleges that LVR falsely stated that the lines it was acquiring from UP were approximately 22.34 miles long. It maintains that the length of the lines "includes the entire rail line being acquired by NCR." Nevada Central

Railroad, however, does not describe the line it supposedly is acquiring, from whom it is acquiring the line or provide any data relating to the line.

Finally, Nevada Central Railroad incomprehensively faults LVR for acknowledging in its Notice of Exemption that LVR is acquiring the Flanigan Industrial Lead subject to 49 U.S.C. 10904 and 49 C.F.R. 1152.27 if Mr. Kemp ultimately is legally authorized to offer to purchase the 220-foot segment of the western end of the line. LVR recognized that Mr. Kemp filed an Offer of Financial Assistance to purchase the 220-foot section at the east end of the Flanigan Industrial lead, disallowed by the Board and now the subject of a pending petition for review before the U.S. Court of Appeals for the 9<sup>th</sup> Circuit. Yet Nevada Central Railroad incredibly calls LVR statement "Absolutely False, and at best Misleading."

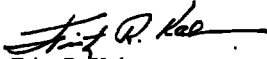
Nevada Central Railroad's allegations that LVR's Notice of Exemption contained false or misleading information are completely unfounded. The Notice of Exemption was complete and accurate. Nevada Central Railroad's motion to reject LVR's Notice of Exemption, accordingly, should be denied.

Pursuant to 49 U.S.C. 10502(d), an exemption may be revoked if necessary to carry out the transportation policy of 49 U.S.C. 10101. 49 C.F.R. 1121.4(f), in part, declares, "The person seeking revocation has the burden of showing that the revocation criteria of 49 U.S.C. 10502(d) have been met." Nevada Central Railroad does not even pretend to specify how revocation of LVR's Notice of Exemption is necessary to carry out the transportation policy of 49 U.S.C. 10101. Its motion to revoke LVR's Notice of Exemption, therefore, should be denied.

WHEREFORE, Lassen Valley Railway asks that Nevada Central Railroad's  
December 17, 2009, Petition to Reject and or Revoke and Motion for Oral Argument and  
Leave to Supplement Filing be rejected or, in the alternative, be denied.

Respectfully submitted,

LASSEN VALLEY RAILWAY LLC

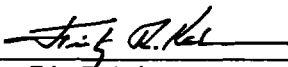
  
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Dated: December 22, 2009

#### CERTIFICATE OF SERVICE

I certify that I this day served the foregoing Reply upon Nevada Central Railroad  
by e-mailing a copy to it.

Dated at Washington, DC, this 22<sup>nd</sup> day of December 2009.

  
Fritz R. Kahn